



TCA, Inc.
TELECOMMUNICATIONS CONSULTANTS

May 15, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: CC Docket No. 96-98

Dear Secretary:

Enclosed herewith for filing are the original and sixteen (16) copies of TCA, Inc. - Telecommunications Consultants comments regarding CC Docket No. 96-98, Notice of Proposed Rulemaking in the matter of Implementing Local Competition Provisions in the Telecommunications Act of 1996.

Sincerely,

Chris Barron

CB/jl
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Local Competition) CC Docket No. 96-98
Provisions in the Telecommunications Act)
of 1996)

COMMENTS OF TCA, INC. - TELECOMMUNICATIONS CONSULTANTS

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Summary

The concerns of rural LECs and the customers they serve require special treatment. Competition, if it does materialize in rural, high service cost areas, will lag years behind urban local service markets. It is imperative that competition in rural areas be introduced logically and be compatible with the public interest, especially the public interest as it relates to maintaining and advancing universal service. TCA suggests that, however vital the Commission's proposed rules are to insuring fair local competition in large, densely populated urban areas, allowing competition in rural areas should only be done on a case by case basis. Further, it is the competing carrier who should have the burden of proof that its request is in the public interest, including the public interest with respect to universal service. Therefore, TCA believes that the exemptions, suspensions, and modifications afforded to rural telephone companies in section 251(f) of the Act should determine where and when competition is allowed in areas served by rural telephone companies and it is the competing carrier that should have the burden of proof that its request meets the guidelines in this section.

TCA wishes to stress to the Commission the importance of recognizing the difference between urban and rural areas. Recognizing this difference is imperative when the Commission contemplates how to promote competition in the telecommunications industry. Competition, if and when it develops in high cost rural areas, must be found to be in the public interest, must maintain and advance universal service, and must be introduced logically and reasonably.

I. Introduction

TCA, Inc. - Telecommunications Consultants (TCA) files these Comments in response to the *Notice of Proposed Rulemaking (NPRM)* released in this docket on April 19, 1996. This proceeding is examining implementation of the local competition provisions in the Telecommunications Act of 1996 (Act). TCA is a regulatory and financial consulting firm that provides services to rural Local Exchange Carriers (LECs) throughout the United States.

II. Obligations Imposed on Incumbent LECs

Incumbent LECs that serve rural areas (ie: rural telephone companies) as defined in section 3(47) of the Act should be exempt from the obligations set out in section 251(c) until the rural telephone company receives a bona fide request, and the state commission finds that the request is not unduly economically burdensome, is technically feasible, and is in the best interest of maintaining and advancing universal service. TCA believes that companies that serve rural, insular, and high cost areas which are not under immediate threat of competition for local service should not be forced to comply with the provisions of subsection (c) of section 251. It would be extremely costly for rural telephone companies to comply with the provisions in subsection (c), especially if they are forced to perform LRIC or TSLRIC studies for pricing access to network elements and interconnection.

However, TCA also knows that competition is likely to come to some rural areas faster than others, and that some rural areas may never see the "benefit" of local competition. Therefore, it is vital for the Commission to not only recognize the difference between rural and urban areas, but also the difference between the widely disparate rural areas of the country when deciding upon rules to implement local competition. It is also important for the Commission to distinguish between rural LECs and larger, predominately urban LECs when implementing local competition. Larger LECs have significantly more resources with which to deal with the rigorous requirements of local competition, and the economies of scale to be able to lose market share to new entrants without imposing prohibitive rates on their customers to recover additional embedded costs.

Once it has been decided that competition is in the best interest of a particular rural area, TCA offers the following regarding the obligations of incumbent LECs in section 251(c).

A. Duty to Negotiate in Good Faith

TCA notes that in the Commission's quote of section 251(c)(1) in paragraph 46 of the NPRM, there is no mention of the requesting telecommunications carrier's obligations. Section 251(c)(1) states that "the requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements." The requirement to negotiate in good faith is one which both parties to the negotiations should have to follow.

B. Interconnection

TCA believes that it is important for the Commission not to preempt any existing state interconnection rules which do not conflict with the Act. In some states, interconnection rules have been implemented through long, time consuming proceedings and the results are generally what is best for the companies in those states.

For rural telephone companies at least, "interconnection" and "transport and termination" should be priced and treated similarly. It would be difficult, at best, for most rural telephone companies to distinguish between the services and the facilities which those services use in any manner that is economically reasonable.

A definition of a "technically feasible point" at this time is premature. In reality, a technically feasible point is any point to which the new entrant and the incumbent LEC agree to interconnect. Absent an agreement, it is up to the arbitration process set forth in section 252 to arrive at technically feasible points.

TCA believes that should a competing carrier request interconnection with a rural LEC's network, that the requesting carrier should be required to bear the incumbent's direct costs of providing and administering the provision of that service. Some of examples of these costs, which are over and above any costs recovered in rates for interconnection, are administrative costs and costs related to the initial installation of the necessary equipment to interconnect with the competing carrier.

C. Unbundled Network Elements

TCA believes that the unbundled network elements (unbundling) provision in the NPRM is the most crucial should competition be found to be in the best interest of rural ratepayers. If rural companies are required to offer unbundled access to their network elements, it is imperative that the Commission, or states, ensure that universal service remains the top priority, and not promote competition for competition's sake. Since universal service must remain the top priority, funding must be made available for rural telephone companies if rates for unbundled network elements make it impossible to keep the incumbent LEC's local service rates at a reasonable and affordable level.

It is also essential that any competitive LEC that is authorized to provide service in a rural telephone company's service area be required to offer service to the entire service area. TCA believes that the Commission's statement in paragraph 75 of the NPRM - "...new entrants can purchase access to those elements incumbent LECs can provide most efficiently, and at the same time build their own facilities only where it would be efficient" - encourages new entrants to only offer service to the most lucrative of the incumbent LEC's customers. This type of "creamskimming" is a direct and serious threat to universal service by leaving rural LECs with large amounts of stranded investment which must be recovered from remaining customers. This stranded investment is the result of years of investment in infrastructure as the carrier of last resort.

Rural telephone companies should only be required to offer as unbundled services those elements which are essential to a new entrant's ability to combine those elements to provide telecommunications services. TCA supports the following as being required of incumbent rural LECs once they have an authorized competitive carrier in their service area:

1. Loop
2. Local Switching
3. Common and Dedicated Transport
4. Signaling

TCA does not agree that further unbundling of loops is a technically feasible point of unbundling for rural LECs.

TCA firmly supports that any cost of unbundling should be paid by the requesting carrier. Absent this type of provision, unbundling network elements for rural LECs could very well be "economically unreasonable" and put upward pressure on local rates as the result of stranded investment. This results from the requesting carrier paying unbundled rates which do not fully recover the incumbent's embedded costs. These costs are a result of the incumbent's long-standing commitment to providing universal service as the carrier of last resort.

D. Resale Obligations of Incumbent LECs

Any new entrant requesting authorization to provide resale of an incumbent LEC's services in a rural area will have a difficult time proving that its application is in the public interest. Resale does not contribute to the advancement of universal service. However, should the duty to offer resale be required in rural areas, TCA offers these comments.

Pricing of wholesale services for rural LECs is an entirely different scenario than for larger LECs. Rural LECs' local service rates have been and will continue to be highly supported in order to keep the rates affordable in insular, high cost areas. As a result, these rates are below cost, and it would be problematic at best to then remove "avoided" costs and call the product a "wholesale" rate. Wholesale rates for rural LECs should consist of a flat "discount" of the retail rate unless and until a requesting carrier can prove a specific discount is more reasonable. In no case, however, should a non-facilities based reseller be allocated any universal service funding or directly or indirectly receive the benefit of any other implicit or explicit support.

TCA does not agree with the "imputation rule" as it is defined in the NPRM. There are two major flaws in this rule if it were applied to rural LECs. First, it does not recognize that rates for unbundled network elements, by their very nature, are based on some kind of cost, and this cost is independent of any support. Second, because of that support, a rural LEC's retail local service rates are well below cost in most cases. It then becomes difficult, if not impossible, to compare the aggregate unbundled service rates, which are based on cost, and the rural LEC's retail local service rate, which is generally not cost-based, for the "imputation rule".

E. Pricing of Interconnection, Collocation, and Unbundled Network Elements

TCA agrees that, as stated in section 252(d) of the Act, that rates for interconnection and unbundled network elements should not be determined through a traditional cost-of-service proceeding by a state commission. However, TCA does not agree with the Commission's conclusion that the setting of prices should be "based on a forward-looking cost methodology that does not involve the use of an embedded rate base, such as long-run incremental cost." Section 252(d) of the Act requires that rates be based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element, nondiscriminatory, and may include a reasonable profit. For rural telephone companies, the cost for providing unbundled network elements must include an allocated portion of common costs and overhead, plus a method of recovering historical, embedded costs. These types of cost can not simply be ignored in favor of promoting competition. Rural telephone companies

have spent years investing in infrastructure to provide state-of-the-art telecommunications services in high cost areas, and to force rural LECs to forego recovery of these costs would jeopardize universal service. In addition, the Act specifically allows that the rates may include a reasonable profit. This can not be accomplished if a rural LEC is forced to price at some "forward-looking" costing methodology, such as LRIC, which does not fully compensate the LEC for all of its costs for pricing a service.

An additional problem with basing prices on LRIC is that LRIC should only be used as the "floor" in a possible range of prices, with fully distributed cost generally acknowledged as being the ceiling. LRIC, if used at all, should only be used as a test for predatory pricing or regulatory confiscation and not as the price for unbundled network elements or any other service a telephone company offers.

III. Obligations Imposed on Local Exchange Carriers by Section 251(b)

TCA defines transport and termination of traffic as a function of interconnection and access to unbundled network elements. As such, the rates should be based on the cost of providing transport and termination service, either on a flat-rate or usage sensitive basis.

TCA believes that the transport and termination provisions in the Act do not include traffic passing between neighboring LECs that do not compete with one another.

IV. Exemptions, Suspensions, and Modifications

For rural LECs, this section in the Act is crucial to logically and reasonably implementing competition, if competition indeed develops in high cost rural areas. The competing carrier making a request to provide service, either through resale or the purchase of unbundled network elements, should have the burden of proving that its application is not unduly economically burdensome, is technically feasible, and is consistent with the universal service policies contained in section 254. TCA believes this means that the competing carrier must prove, beyond any doubt, that competition in any given rural area is in the public's best interest, especially as that interest relates to the maintenance and advancement of universal service.

V. Conclusion

In conclusion, TCA wishes to stress to the Commission the importance of recognizing the difference between urban and rural areas. Recognizing this difference is imperative when the Commission contemplates how to promote competition in the telecommunications industry. Competition, if and when it develops in high cost rural areas, must be found to be in the public interest, must maintain and advance universal service, and must be introduced logically and reasonably.

Respectfully submitted,

TCA, Inc.

A handwritten signature in black ink, appearing to read "Chris Barron", written over a horizontal line.

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May 16, 1996